SPEECH

OF THE

HON. DANIEL WEBSTER,

IN THE SENATE OF THE UNITED STATES,

ON THE

PRESIDENT'S VETO OF THE BANK BILL.

JULY 11, 1832.

SPEECH.

Mr. President,

No one will deny the high importance of the subject now before us. Congress, after full deliberation and discussion, has passed a Bill for extending the duration of the Bank of the United States, by decisive majorities, in both Houses. It has adopted this measure not until its attention had been called to the subject, in three successive annual messages of the President. The bill having been thus passed by both Houses, and having been duly presented to the President,—instead of signing and approving it, he has returned it with objections. These objections go against the whole substance of the law, originally creating the Bank. They deny, in effect, that the Bank is Constitutional, they deny that it is expedient, they deny that it is necessary for the public service.

It is not to be doubted, that the Constitution gives the President the power, which he has now exercised; but while the power is admitted, the grounds upon which it has been exerted become fit subjects of examination. The Constitution makes it the duty of Congress, in cases like this, to reconsider the measure, which they have passed, to weigh the force of the President's objections to that measure, and to take a new vote upon the question.

Before the Senate proceeds to this second vote, I propose to make some remarks upon those objections. And in the first place, it is to be observed, that they are such as to extinguish all hope, that the present Bank, or any Bank at all resembling it, or resembling any known similar institution, can ever receive his approbation. He states no terms, no qualifications, no conditions, no modifications, which can reconcile him to the essential provisions of the existing charter. He is against the Bank, and against any bank constituted in a manner known either to this, or any other country. One advantage, therefore, is certainly obtained, by presenting him the bill. It has caused his sentiments to be made known. There is no longer any mystery, no longer a contest between hope and fear, or between

those prophets who predicted a *Veto*, and those who foretold an approval. The bill is negatived, the President has assumed the responsibility of putting an end to the Bank; and the country must prepare itself to meet that change in its concerns, which the expiration of the charter will produce. Mr. President, I will not conceal my opinion, that the affairs of this country are approaching an important and dangerous crisis. At the very moment of almost unparalleled general prosperity, there appears an unaccountable disposition to destroy the most useful and most approved institutions of the government. Indeed, it seems to be in the midst of all this national happiness, that some are found openly to question the advantages of the Constitution itself; and many more ready to embarrass the exercise of its just power, weaken its authority, and undermine its foundations. How far these notions may be carried, it is impossible yet to say. We have before us the practical result of one of them. The Bank has fallen, or is to fall.

It is now certain, that without a change in our public councils this Bank will not be continued, nor will any other be established, which, according to the general sense and language of mankind, can be entitled to the name. Within three years and nine months from the present moment, the charter of the Bank expires; within that period, therefore, it must wind up its concerns. It must call in its debts, withdraw its bills from circulation, and cease from all its ordinary operations. All this is to be done, in three years and nine months; because, although there is a provision in the charter, rendering it lawful to use the corporate name for two years after the expiration of the charter, yet this is allowed only for the purpose of suits, and for the sale of the estate belonging to the Bank, and for no other purpose whatever—The whole active business of the Bank, its custody of public deposits, its transfers of public moneys, its dealing in exchange, all its loans and discounts, and all its issues of bills for circulation, must cease and determine, on or before the third day of March, 1836; and within the same period its debts must be collected, as no new contract can be made with it, as a corporation, for the renewal of loans, or discount of notes or bills, after that time.

The President is of opinion, that this time is long enough to close the concerns of the institution without inconvenience. His language is, "the time allowed the Bank to close its concerns is ample, and if it has been well managed, its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own." Sir, this is all no more than general statement, without fact or argument to support it. We know what the management of the Bank has been, and we know the present state of its affairs. We can judge, therefore, whether it be probable, that its capital can be all called in, and the circulation of its bills withdrawn, in three years and nine months, by any discretion or prudence

in management, without producing distress. The Bank has discounted liberally, in compliance with the wants of the community. The amount due to it, on loans and discounts, in certain large divisions of the country is great; so great, that I do not perceive how any man can believe, that it can be paid, within the time now limited, without distress. Let us look at known facts. Thirty millions of the capital of the Bank are now out, on loans and discounts in the states on the Mississippi and its waters; ten of these millions on the discount of bills of exchange, foreign and domestic, and twenty millions loaned on promissory notes. Now, sir, how is it possible, that this vast amount can be collected in so short a period, without suffering, by any management whatever? We are to remember, that when the collection of this debt begins, at that same time, the existing medium of payment, that is, the circulation of the bills of the Bank, will begin also to be restrained, and withdrawn, and thus the means of payment must be limited, just when the necessity of making payment becomes pressing. The whole debt is to be paid, and within the same time the whole circulation withdrawn.

The local banks, where there are such, will be able to afford little assistance; because they themselves will feel a full share of the pressure. They will not be in a condition to extend their discounts; but in all probability, obliged to curtail them. Whence, then, are the means to come, for paying this debt, and in what medium is payment to be made? If all this may be done, with but slight pressure on the community, what course of conduct is to accomplish it? How is it to be done? What other thirty millions are to supply the place of these thirty millions now to be called in? What other circulation, or medium of payment, is to be adopted, in the place of the bills of the Bank? The message, following a singular strain of argument, which had been used in this House, has a loud lamentation upon the suffering of the western states, on account of their being obliged to pay even interest on this debt. This payment of interest, is, itself, represented as exhausting their means, and ruinous to their prosperity. But if the interest cannot be paid without pressure, can both interest and principal be paid in four years, without pressure? The truth is, the interest has been paid, is paid, and may continue to be paid, without any pressure at all; because the money borrowed is profitably employed, by those who borrow it, and the rate of interest, which they pay, is at least two per cent. lower than the actual value of money in that part of the country. But to pay the whole principal in less than four years, losing, at the same time, the existing and accustomed means and facilities of payment created by the Bank itself, and to do this without extreme embarrassment, without absolute distress, is, in my judgment, impossible. I hesitate not to say, that as this *veto* travels to the west, it will depreciate the value of every man's property from the Atlantic states to the capital of Missouri. Its

effects will be felt in the price of lands, the great and leading article of western property, in the price of crops, in the products of labour, in the repression of enterprise, and in embarrassment to every kind of business and occupation. I take this opinion strongly, because I have no doubt of its truth, and am willing its correctness should be judged by the event. Without personal acquaintance with the western states, I know enough of their condition to be satisfied, that what I have predicted, must happen. The people of the west are rich, but their riches consist in their immense quantities of excellent land, in the products of these lands, and in their spirit of enterprise. The actual value of money or rate of interest, with them is high, because their pecuniary capital bears little proportion to their landed interest. At an average rate money is not worth less than eight per cent. per annum, throughout the whole western country; notwithstanding that it has now a loan, or an advance, from the Bank of thirty millions, at six per cent. To call in this loan at the rate of eight millions a year, in addition to the interest on the whole, and to take away at the same time, that circulation, which constitutes so great a portion of the medium of payment throughout that whole region, is an operation which, however wisely conducted, cannot but inflict a blow on the community of tremendous force and frightful consequences. The thing cannot be done, without distress, bankruptcy and ruin to many. If the President had seen any practicable manner in which this change might be effected without producing these consequences, he would have rendered infinite service to the community, by pointing it out. But he has pointed out nothing, he has suggested nothing; he contents himself with saying, without giving any reason, that if the pressure be heavy, the fault will be the Bank's. I hope this is not merely an attempt to forestall opinion, and to throw on the Bank the responsibility of those evils which threaten the country, for the sake of removing it from himself.

The responsibility justly lies with him, and there it ought to remain. A great majority of the people, is satisfied with the Bank as it is, and desirous that it should be continued. They wished no change. The strength of this public sentiment has carried the bill through congress, against all the influence of the administration, and all the power of organized party. But the president has undertaken, on his own responsibility, to arrest the measure, by refusing his assent to the bill. He is answerable for the consequences, therefore, which necessarily follow the change, which the expiration of the Bank charter may produce; and if these consequences shall prove disastrous, they can fairly be ascribed to his policy, only, and the policy of his administration.

Although, sir, I have spoken of the effects of this *veto* in the Western Country, it has not been because I considered that part of the United States exclusively affected by it.

Some of the Atlantic States may feel its consequences, perhaps, as sensibly as those of the West, though not for the same reasons. The concern manifested, by Pennsylvania, for the renewal of the Charter, shows *her* sense of the importance of the Bank to her own interest, and that of the nation. That great and enterprising state has entered into an extensive system of internal improvements, which necessarily makes heavy demands on her credit and her resources; and by the sound and acceptable currency which the Bank affords, by the stability which it gives to private credit, and by occasional advances, made in anticipation of her revenues, and in aid of her great objects, she has found herself benefited, doubtless, in no inconsiderable degree. Her Legislature has instructed her Senators here to advocate the renewal of the Charter, at this session; they have obeyed her voice, and yet, they have the misfortune to find that in the judgment of the President, *the measure is unconstitutional, unnecessary, dangerous to liberty, and is, moreover ill timed.* But, Mr. President, it is not the local interest of the West, nor the particular interest of Pennsylvania, or any other State, which has influenced Congress in passing this bill.

It has been governed by a wise foresight, and by a desire to avoid embarrassment, in the pecuniary concerns of the country, to secure the safe collection and convenient transmission of public moneys, to maintain the circulation of the country, sound and safe as it now happily is, against the possible effects of a wild spirit of speculation. Finding the Bank highly useful, Congress has thought fit to provide for its continuance.

As to the *time* of passing this bill, it would seem to be the last thing to be thought of, as a ground of objection by the President; since, from the date of his first message, to the present time, he has never failed to call our attention to the subject with all possibile apparent earnestness. So early as December, 1829, in his message to the two houses, he declares, that he "cannot in justice to the parties interested, too soon present the subject to the deliberate consideration of the Legislature, in order to avoid the evils resulting from precipitancy, in a measure involving such important principles and such deep pecuniary interests." Aware of this early invitation given to congress, to take up the subject, by the President himself, the writer of the message seems to vary the ground of objection, and instead of complaining that the time of bringing forward this measure was premature, to insist, rather, that after the report of the committee of the other house, the Bank should have withdrawn its application for the present! But that report offers no just ground, surely for such withdrawal. The subject was before Congress; it was for Congress to decide upon it, with all the light shed by the report; and the question of postponement, was lost, having been made in both houses, by clear majorities, in each. Under such circumstances, it would have been somewhat singular, to say the least, if the Bank, itself

had withdrawn its application. It is indeed known to every body, that the report of the committee or any thing contained in that report, was very little relied on by the opposers of the renewal. If it has been discovered elsewhere, that that report contained matter important in itself, or which should have led to further enquiry, may be proof of superior sagacity; but certainly no such thing was discerned by either house of Congress.

But, Sir, do we not now see, that it *was* time, and *high* time, to press this Bill, and to send it to the President? Does not the event teach us, that the measure was not brought forward one moment too early? The time had come when the people wished to know the decision of the Administration, on the question of the Bank. Why conceal it, or postpone its declaration? Why, as in regard to the Tariff, give only one set of opinions for the North, and another for the South?

An important election is at hand, and the renewal of the Bank Charter is a pending object of great interest, and some excitement. Should not the opinions of men high in office, and candidates for re-election, be known, on this as on other important, public questions? Certainly, it is to be hoped that the people of the United States are not yet mere man-worshippers, that they do not choose their rulers without some regard to their political principles, or political opinions. Were they to do this, it would be to subject themselves voluntarily, to the evils, which the hereditary transmission of power, independent of all personal qualifications, inflicts on other nations. They will judge their public servants, by their acts, and continue, or withhold, their confidence, as they shall think it merited, or as they shall think it forfeited. In every point of view, therefore, the moment had arrived, when it became the duty of Congress to come to a result, in regard to this highly important measure. The interests of the government, the interests of the people, the clear and indisputable voice of public opinion, all called upon Congress to act without further loss of time. It has acted, and its act has been negatived by the President; and this result of the proceedings here, places the question, with all its connexions and all its incidents, fully before the people.

Before proceeding to the Constitutional question, there are some other topics, treated in the message, which ought to be noticed. It commences by an inflamed statement of what it calls the "favor" bestowed upon the original Bank, by the Government, or indeed, as it is phrased, the "monopoly of its favor and support," and through the whole message all possible changes are rung on the "gratuity," the "exclusive privileges," and "monopoly," of the bank charter. Now, Sir, the truth is, that the powers conferred on the bank, are such, and no others, as are usually conferred on similar institutions. They constitute no monopoly, although some of them are of necessity and with propriety exclusive privileges. "The original act," says the message,

"operated as a gratuity of many millions to the stockholders." What fair foundation is there for this remark? The stockholders received their charter not gratuitously, but for a valuable consideration in money, prescribed by Congress, and actually paid. At some times the stock has been above *par*, at other times below *par*, according to prudence in management, or according to commercial occurrences. But if by a judicious administration of its affairs, it had kept its stock *always* above *par*, what pretence would there be, nevertheless, for saying that such augmentation of its value was a "*gratuity*," from Government? The message proceeds to declare that the present act proposes, another *donation*, another gratuity, to the same men of at least seven millions more. It seems to me that this is an extraordinary statement, and an extraordinary style of argument, for such a subject and on such an occasion. In the first place, the facts are all assumed; they are taken for true without evidence. There are no proofs that any benefit to that amount will accrue to the stockholders, nor any experience to justify the expectation of it. It rests on random estimates, or mere conjecture. But suppose the continuance of the charter should prove beneficial to the stockholders, do they not pay for it? They give twice as much for a charter of 15 years as was given before for one of twenty. And if the proposed *bonus*, or premium, be not, in the President's judgment, large enough, would he, nevertheless, on such a mere matter of opinion as that, negative the whole bill? May not Congress be trusted to decide, even on such a subject as the amount of the money premium, to be received by Government for a charter of this kind? But, sir, there is a larger, and a much more just view of this subject. The bill was not passed for the purpose of benefiting the present stockholders. Their benefit, if any, is incidental, and collateral. Nor was it passed on any idea that they had a *right* to a renewed charter; although the message argues against such right, as if it had been some where set up and asserted. No such right has been asserted by any body. Congress passed the bill, not as a bounty or a favor to the present stockholders, nor to comply with any demand of right, on their part; but to promote great public interests, for great public objects. Every bank must have some stockholders, unless it be such a bank as the President has recommended, and in regard to which he seems not likely to find much concurrence of other men's opinions; and if the stockholders, whoever they may be, conduct the affairs of the bank prudently, the expectation is, always of course, that they will make it profitable to themselves, as well as useful to the public. If a bank charter is not to be granted, because it may be profitable, either in a small or great degree, to the stockholders, no charter can be granted. The objection lies against all banks. Sir, the object aimed at by such institutions is to connect the public safety and convenience with private interests. It has been found by experience,

that banks are safest under private management, and that government banks are among the most dangerous of all inventions. Now, sir, the whole drift of the message is to reverse the settled judgment of all the civilized world, and to set up *government* banks, independent of private interest, of private control. For this purpose the message labors even beyond the measure of all its other labors, to create jealousies and prejudices, on the ground of the alleged benefit which individuals will derive from the renewal of this charter. Much less effort is made to shew, that Government, or the public will be injured by the bill, than that individuals will profit by it. Following up the impulses of the same spirit, the message goes on gravely to allege, that the act, as passed by Congress, proposes to make a *present* of some millions of dollars to foreigners; because a portion of the stock is holden by foreigners. Sir, how would this sort of argument apply to other cases? The President has shewn himself not only willing, but anxious, to pay off the three per cent stocks of the United States *at par.* notwithstanding that it is notorious that foreigners are owners of the greater part of it. Why should he not call that a *donation* to foreigners of many millions?

I will not dwell particularly on this part of the message. Its tone and its arguments are all in the same strain. It speaks of the certain gain of the present stockholders, of the value of the monopoly; it says that all monopolies are granted at the expense of the public, that the many millions which this bill bestows on the stockholders, come out of the earnings of the people; that if Government sells monopolies, it ought to sell them in open market; that it is an erroneous idea, that the present stockholders have a prescriptive right either to the favor or the bounty of Government; that the stock is in the hands of a few, and that the whole American people are excluded from competition in the purchase of the monopoly. To all this I say, again, that much of it is assumption without proof, much of it is an argument against that which nobody has maintained or asserted, and the rest of it would be equally strong against any charter, at any time. These objections existed in their full strength, whatever that was, against the first Bank. They existed, in like manner, against the present Bank at its creation, and will always exist against all Banks. Indeed as to the bill now before us, all the fault found with that is, that it proposes to continue the Bank substantially as it now exists. "All the objectionable principles of the existing corporation," says the message, "and most of its odious features are retained without alleviation;" so that the message is aimed against the Bank, as it has existed from the first, and against any and all others resembling it in its general features. Allow me now, sir, to take notice of an argument, founded on the practical operation of the Bank. That argument is this. Little of the stock of the Bank is held in the West, being chiefly owned by citizens of the Southern and Eastern

states, and by foreigners. But the Western and Southwestern States owe the Bank a heavy debt, so heavy that the interest amounts to a million six hundred thousand a year. This interest is carried to the eastern states, or to Europe, annually, and *its payment is a burden on the people of the west, and a drain of their currency, which no country can bear without inconvenience and distress.* The true character and the whole value of this argument, are manifest by the mere statement of it. The people of the west are from their situation, necessarily large borrowers. They need money—capital, and they borrow it, because they can derive a benefit from its use, much beyond the interest which they pay. They borrow at six per cent. of the Bank, although the value of money, with them is at least as high as eight. Nevertheless, although they borrowed at this low rate of interest, and although they use all they borrow thus profitably, yet they cannot pay the interest without "*inconvenience and distress;*" and then, sir, follows the logical conclusion, that, *although they cannot pay even the interest without inconvenience and distress, yet less than four years is ample time for the Bank to call in the whole, both principal and interest, without causing more than a light pressure.* This is the argument. Then follows another, which may be thus stated. It is competent to the States to tax the property of their citizens, vested in the stock of this Bank, but the power is denied of taxing the stock of foreigners; therefore, the stock will be worth ten or fifteen per cent. more to foreigners, than to residents, and will of course inevitably leave the country, and make the American people debtors to aliens in nearly the whole amount due the Bank, and send across the Atlantic from two to five millions of specie every year, to pay the bank dividends. Mr. President, arguments like these might be more readily disposed of, were it not that the high and official source from which they proceed, imposes the necessity of treating them with respect. In the first place, it may safely be denied, that the stock of the Bank is any more valuable to foreigners than our own citizens, or an object of greater desire to them, except in so far as capital may be more abundant in the foreign country, and therefore its owners more in want of opportunity of investment. The foreign stockholder enjoys no exemption from taxation. He is, of course, taxed by his own government for his incomes, derived from this as well as other property; and this is a full answer to the whole statement. But it may be added, in the second place, that it is not the practice of civilized states to tax the property of foreigners under such circumstances. Do we tax, or did we ever tax, the foreign holders of our public debt? Does Pennsylvania, New York, or Ohio, tax the foreign holders of stock in the loans contracted by either of these states? Certainly not. Sir, I must confess, I had little expected to see, on such an occasion as the present, a laboured and repeated attempt to produce an impression on the public opinion, unfavourable to the Bank, from the circumstance that fo-

reigners are among its stockholders. I have no hesitation in saying that I deem such a strain of remark as the message contains, on this point, coming from the President of the United States to be injurious to the credit and character of the country abroad; because it manifests a jealousy, a lurking disposition not to respect the property of foreigners, invited hither by our own laws. And, sir, what is its tendency but to excite this jealousy and create groundless prejudices?

From the commencement of the government it has been thought desirable to invite, rather than to repel, the introduction of foreign capital. Our stocks have all been open to foreign subscriptions; and the state banks in like manner are free to foreign ownership. Whatever State has created a debt, has been willing that foreigners should become purchasers, and desirous of it. How long is it, sir, since Congress itself passed a law vesting new powers in the President of the United States over the cities in this district, for the very purpose of increasing their credit abroad, the better to enable them to borrow money to pay their subscriptions to the Chesapeake and Ohio Canal? It is easy to say that there is danger to liberty, danger to independence, in a bank open to foreign stockholders—because it is easy to say any thing. But neither reason nor experience proves any such danger. The foreign stockholder cannot be a director. He has no voice even in the choice of directors. His money is placed entirely in the management of the directors appointed by the President and Senate, and by the American stockholders. So far as there is dependence, or influence, either way, it is to the disadvantage of the foreign stockholder. He has parted with the control over his own property, instead of exercising control over the property or over the actions of others. And, sir, let it now be added, in further answer to this whole class of objections, that experience has abundantly confuted them all. This government has existed forty-three years, and has maintained, in full being and operation, a Bank, such as is now proposed to be renewed, for thirty-six years out of the forty-three. We have never for a moment had a Bank not subject to every one of these objections. Always, foreigners might be stockholders; always, foreign stock has been exempt from state taxation, as much as at present; always the same power and privileges; always all that which is now called a "monopoly," a "gratuity," a "present," has been possessed by the Bank. And yet there has been found no danger to liberty, no introduction of foreign influence, and no accumulation of irresponsible power in a few hands. I cannot but hope, therefore, that the people of the United States will not now yield up their judgment to those notions, which would reverse all our past experience, and persuade us to discontinue a useful institution, from the influence of vague and unfounded declamation against its danger to the public liberties. Our liberties, indeed, must

stand upon very frail foundations, if the government cannot, without endangering them, avail itself of those common facilities, in the collection of its revenues, and the management of its finances, which all other governments, in commercial countries, find useful and necessary. In order to justify its alarm for the security of our independence, the message supposes a case. It supposes that the Bank should pass principally into the hands of the subjects of a foreign country, and that we should be involved in war with that country, and then it exclaims, "what would be our condition!" Why, sir, it is plain that all the advantages would be on our side. The Bank would still be our institution, subject to our own laws, and all its directors elected by ourselves: and our means would be enhanced, not by the confiscation and plunder, but by the proper use of the foreign capital in our hands. And, sir, it is singular enough, that this very state of war, from which this argument against a Bank is drawn, is the very thing which, more than all others, convinced the country and the government of the necessity of a National Bank. So much was the want of such an institution felt, in the late war, that the subject engaged the attention of Congress, constantly, from the declaration of that war down to the time when the existing Bank was actually established; so that, in this respect, as well as in others, the argument of the message is directly opposed to the whole experience of the government, and to the general and long settled convictions of the country.

I now proceed, Sir, to a few remarks upon the President's Constitutional objections to the Bank; and I cannot forbear to say, in regard to them, that he appears to me to have assumed very extraordinary grounds of reasoning. He denies, that the constitutionality of the Bank, is a settled question. If it be not, will it ever become so, or what disputed question ever can be settled? I have already observed, that for thirty-six years, out of the forty-three, during which the Government has been in being, a Bank has existed, such as is now proposed to be continued.

As early as 1791, after great deliberation, the first Bank Charter was passed by Congress and approved by President Washington. It established an Institution, resembling in all things, now objected to, the present Bank. That Bank, like this, could take lands in payment of its debts; that charter, like the present, gave the states no power of taxation; it allowed foreigners to hold stock, it restrained Congress from creating other Banks. It gave also, exclusive privileges, and in all particulars it was, according to the doctrine of the message, as objectionable as that now existing. That Bank continued twenty years. In 1816, the present Institution was established, and has been, ever since, in full operation. Now, Sir, the question of the power of Congress to create such institutions, has been

contested in every manner known to our Constitution and Laws. The forms of the government furnish no new mode, in which to try this question. It has been discussed over and over again, in Congress; it has been argued and solemnly adjudged in the Supreme Court; every President, except the present, has considered it a settled question; many of the State Legislatures have instructed their Senators to vote for the Bank; the tribunals of the States, in every instance have supported its constitutionality; and beyond all doubt and dispute, the general public opinion of the country, has at all times given, and does now give, its full sanction and approbation to the exercise of this power, as being a constitutional power. There has been no opinion, questioning the power, expressed or intimated, at any time, by either House of Congress, by any President, or by any respectable judicial tribunal. Now, Sir, if this practice of near forty years, if these repeated exercises of the power, if this solemn adjudication of the Supreme Court, with the concurrence and approbation of public opinion, do not settle the question, how is any question ever to be settled, about which any one may choose to raise a doubt? The argument of the message, upon the Congressional precedents, is either a bold and gross fallacy, or else it is an assertion without proofs, and against known facts. The message admits, that in 1791, Congress decided in favour of a Bank; but it adds that another Congress, in 1811, decided against it. Now, if it be meant that in 1811, Congress decided against the Bank *on Constitutional ground*, then the assertion is wholly incorrect, and against notorious fact. It is perfectly well known, that many members, in both Houses, voted against the Bank, in 1811, who had no doubt at all of the constitutional power of Congress. They were entirely governed by other reasons given at the time. I appeal, Sir, to the Hon. member from Maryland, (Gen Smith) who was then a member of the Senate, and voted against the Bank, whether he, and others, who were on the same side, did not give those votes on other well known grounds, and not at all on the constitutional ground?

[Gen. Smith, here rose and said, that he voted against the Bank in 1811, but not at all on constitutional grounds, and had no doubt such was the case with other members.]

We all know, sir, (continued Mr. Webster) the fact to be as the gentleman from Maryland has stated it. Every man who recollects, or who has read, the political occurrences of that day, knows it. Therefore, if the message intends to say, that in 1811, Congress denied the existence of any such *constitutional power*, the declaration is unwarranted—is altogether at variance with the facts. If, on the other hand, it only intends to say, that Congress decided against the proposition then before it, *on some other grounds*, then it alleges that which is nothing at all to the purpose. The argument, then, either assumes for truth that which is not true, or else, the whole statement is immaterial and futile.

But whatever value others may attach to this argument, the message thinks so highly of it, that it proceeds to repeat it. "One Congress," it says, "in 1815 decided against a Bank, another in 1816 decided in its favour. There is nothing in precedent, therefore, which if its authority were admitted, ought to weigh in favour of the act before me." Now, sir, since it is known to the whole country, one cannot but wonder how it should remain unknown to the President, that Congress *did not* decide against a Bank in 1815. On the contrary, that very Congress passed a bill for erecting a Bank by very large majorities. In one form, it is true, the bill failed in the House of Representatives; but the vote was reconsidered, the bill recommitted, and finally passed by a vote of *one hundred and twenty to thirty-nine.* There is, therefore, not only no solid ground, but not even any plausible pretence, for the assertion that Congress in 1815 decided against the Bank. That very Congress passed a bill to create a Bank, and its decision, therefore, is precisely the other way, and is a direct practical precedent in favour of the constitutional power. What are we to think of a constitutional argument which deals, in this way, with historical facts? When the message declares, as it does declare, that there is nothing in precedent which ought to weigh in favour of the power, it sets at nought repeated acts of Congress affirming the power, and it also states other acts, which were in fact, and which are well known to have been directly the reverse, of what the message represents them. There is not, sir, the slightest reason to think that any Senate or any House of Representatives ever assembled under the constitution, contained a majority that doubted the constitutional existence of the power of Congress to establish a Bank. Whenever the question has arisen, and has been decided, it has been always decided one way. The legislative precedents all assert and maintain the power; and these legislative precedents have been the law of the land for almost forty years. They settle the construction of the constitution, and sanction the exercise of the power in question so far as these ends can ever be accomplished by any legislative precedents whatever. But the President does not admit the authority of precedent. Sir, I have always found, that those who habitually deny most vehemently the general force of precedent, and assert most strongly the supremacy of private opinion, are yet, of all men, most tenacious of that very authority of precedent whenever it happens to be in their favour. I beg leave to ask, sir, upon what ground, except that of *precedent, and precedent alone*, the President's friends have placed his power of *removal from office?* No such power is given by the constitution, in terms, nor any where intimated, throughout the whole of it; no paragraph or clause of that instrument recognizes such a power. To say the least, it is as questionable, and has been as often questioned, as the power of Congress to create a Bank; and

enlightened by what has passed under our own observation, we now see that it is of all powers the most capable of flagrant abuse. Now, sir, I ask again, what becomes of this power, if the authority of *precedent* be taken away? It has all along been denied to exist, it is no where found in the constitution, and its recent exercise, or to call things by their right names, its recent abuse, has more than any other single cause, rendered good men either cool in their affections toward the government of their country, or doubtful of its long continuance. Yet this power has *precedent*, and the President exercises it. We know, sir, that without the aid of that *precedent*, his acts could never have received the sanction of this body, even at a time when his voice was somewhat more potential here than it now is, or, as I trust, ever again will be. Does the President then reject the authority of all precedent except what it is suitable to his own purposes to use? And does he use, without stint or measure, *all* precedents which may augment his own power, or gratify his wishes? But, if the President thinks lightly of the authority of Congress, in construing the constitution, he thinks still more lightly of the authority of the Supreme Court. He asserts a right of individual judgment, on constitutional questions, which is totally inconsistent with any proper administration of the government, or any regular execution of the laws. Social disorder, entire uncertainty in regard to individual rights and individual duties, the cessation of legal authority, confusion, the dissolution of free government!—all these, are the inevitable consequences of the principles adopted by the message, whenever they shall be carried to their full extent. Hitherto, it has been thought that the *final decision* of constitutional questions, belonged to the supreme judicial tribunal. The very nature of free government, it has been supposed, enjoins this; and our constitution, moreover, has been understood so to provide, clearly and expressly. It is true, that each branch of the legislature has an undoubted right, in the exercise of its functions, to consider the constitutionality of a law proposed to be passed. This is naturally a part of its duty, and neither branch can be compelled to pass any law, or do any other act, which it deems to be beyond the reach of its constitutional power. The President has the same right, when a bill is presented for his approval; for he is doubtless, bound to consider, in all cases, whether such bill be compatible with the constitution, and whether he can approve it consistently with his oath of office. But when a law has been passed by Congress, and approved by the President, it is now no longer in the power, either of the same President, or his successors, to say whether the law is constitutional or not. He is not at liberty to disregard it; he is not at liberty to feel, or to affect "constitutional scruples," and to sit in judgment himself on the validity of a statute of the government, and to nullify it, if he so chooses. After a law has passed

through all the requisite forms; after it has received the requisite legislative sanction and the executive approval, the question of its constitutionality then becomes a judicial question, and a judicial question alone. In the Courts that question may be raised, argued, and adjudged; it can be adjudged no where else.

The President is as much bound by the law as any private citizen, and can no more contest its validity than any private citizen. He may refuse to obey the law, and so may a private citizen; but both do it at their own peril, and neither of them can settle the question of its validity. The President may *say* a law is unconstitutional, but he is not the judge. Who is to decide that question? The Judiciary, alone, possess this unquestionable, and hitherto unquestioned right. The Judiciary is the constitutional tribunal of appeal, for the citizens, against both Congress and the Executive, in regard to the constitutionality of laws. It has this jurisdiction expressly conferred upon it, and when it has decided the question, its judgment must, from the very nature of all judgments that are final and from which there is no appeal, be conclusive. Hitherto, this opinion, and a correspondent practice, have prevailed, in America, with all wise and considerate men. If it were otherwise, there would be no government of laws; but we should all live under the government, the rule, the caprices of individuals. If we depart from the observance of these salutary principles, the executive power becomes at once purely despotic; for the President, if the principle and the reasoning of the message be sound, may either execute, or not execute, the laws of the land, according to his sovereign pleasure. He may refuse to put into execution one law, pronounced valid by all branches of the government, and yet execute another, which may have been by constitutional authority pronounced void. On the argument of the message, the President of the United States holds, under a new pretence, and a new name, a *dispensing power* over the laws, as absolute as was claimed by James the Second of England a month before he was compelled to fly the kingdom. That which is now claimed for the President, is, in truth, nothing less, and nothing else, than the old *dispensing power* asserted by the kings of England in the worst of times—the very climax, indeed, of all the preposterous pretensions of the Tudor and the Stuart races. According to the doctrines put forth by the President, although Congress may have passed a law, and although the Supreme Court may have pronounced it constitutional, yet, it is, nevertheless, no law at all, if he, in his good pleasure, sees fit to deny it effect; in other words to repeal and annul it. Sir, no President, and no public man ever before advanced such doctrines in the face of the nation. There never before was a moment in which any President would have been tolerated in asserting such a claim to despotic power. After Congress has passed the law, and after

the Supreme Court has prononnced its judgment, on the very point in controversy, the President has set up his own private judgment against its constitutional interpretation. It is to be remembered, sir, that it is the present law, it is the act of 1816, it is the present charter of the Bank, which the President pronounces to be unconstitutional. It is no Bank *to be created*, it is no law proposed to be passed, which he denounces; it is the *law now existing*, passed by Congress, approved by President Madison, and sanctioned by a solemn judgment of the Supreme Court, which he now declares unconstitutional, and which, of course, so far as it may depend on him, cannot be executed. If these opinions of the President's be maintained, there is an end of all law and all judicial authority. Statutes are but recommendations, judgments no more than opinions. Both are equally destitute of binding force. Such an universal power, as is now claimed for him, a power of judging over the laws, and over the decisions of the tribunal, is nothing else than pure despotism. If conceded to him it makes him, at once, what Louis the Fourteenth proclaimed himself to be, when he said "I AM THE STATE."

The Supreme Court has unanimously declared and adjudged that the existing Bank *is* created by a constitutional law of Congress. As has been before observed, this Bank, so far as the present question is concerned, is like that which was established in 1791, by Washington, and sanctioned by the great men of that day. In every form, therefore, in which the question can be raised, it has been raised, and has been settled. Every process and every mode of trial, known to the constitution and laws, has been exhausted; and always, and without exception, the decision has been in favour of the validity of the law. But all this practice, all this precedent, all this public approbation, all this solemn adjudication directly on the point, is to be disregarded, and rejected, and the constitutional power flatly denied. And, sir, if we are startled at this conclusion, our surprise will not be lessened when we examine the argument by which it is maintained.

By the constitution, Congress is authorised to pass all laws "necessary and proper" for carrying its own legislative powers into effect. Congress has deemed a Bank to be "necessary and proper" for these purposes, and it has therefore established a Bank. But although the law has been passed and the Bank established, and the constitutional validity of its charter solemnly adjudged, yet, the President pronounces it *unconstitutional*, because *some* of the powers bestowed on the Bank are, *in his opinion*, not necessary or proper. It would appear, that powers, which in 1791, and in 1816, in the time of Washington, and in the time of Madison, were deemed "necessary and proper," are no longer to be so regarded, *and therefore the Bank is unconstitutional.* It has really come to this, *that the constitutionality of a Bank is*

to depend upon the opinion which one particular man may form of the utility or necessity of some of the clauses in its charter. If that individual chooses to think that a particular power contained in the charter *is not necessary to the proper constitution of the Bank*, then the act is unconstitutional!

Hitherto it has always been supposed that the question was of a very different nature. It has been thought that the *policy* of granting a particular charter may be materially dependant on the structure, and organization, and powers of the proposed institution. But its general constitutionality has never before been understood to turn on such points. This would be making its constitutionality depend on subordinate questions, on questions of expediency, and questions of detail; upon that which one man may think necessary, and another may not. If the constitutional question were made to hinge on matters of this kind, how could it ever be decided? all would depend on conjecture, on the complexional feeling, on the prejudices, on the passions of individuals; on more or less practical skill, or correct judgment, in regard to banking operations, among those who should be the judges; on the impulse of momentary interests, party objects, or personal purposes. Put the question, in this manner, to a court of seven judges, to decide whether a particular bank was constitutional, and it might be doubtful whether they could come to any result, as they might well hold very various opinions on the practical utility of many clauses of the charter.

The question, in that case would be, not whether the Bank, in its general frame, character and objects, was a proper instrument to carry into effect the powers of the government; but whether the particular powers, direct, or incidental, conferred on a particular bank, were better calculated than all others to give success to its operations. For if not, then the charter would be unwarranted, according to this sort of reasoning, by the Constitution. This mode of construing the Constitution is certainly a novel discovery. Its merits belong entirely to the President and his advisers. According to this rule of interpretation, if the President should be of opinion, that the capital of the Bank, was larger, by a thousand dollars, than it ought to be; or that the time for the continuance of the Charter, was a year too long; or that it was unnecessary to require it, under penalty, to pay specie; or needless to provide for punishing, as forgery, the counterfeiting of its bills; either of these reasons would be sufficient to render the charter, in his opinion, unconstitutional, invalid, and nugatory. This is a legitimate conclusion from the argument. Such a view of the subject has certainly never before been taken. This strain of reasoning has hitherto not been heard, within the halls of Congress, nor has any one ventured upon it before the tribunals of justice. The first exhibition, its first appearance, as an argument, is in a message of the President of

the United States. According to that mode of construing the constitution, which was adopted by Congress in 1791, and approved by Washington, and which has been sanctioned by the judgment of the Supreme Court, and affirmed by the practice of near forty years, the question upon the constitutionality of the Bank involves two inquiries: first, whether a Bank, in its general character, and with regard to the general objects with which Banks are usually connected, be, in itself, a fit means, a suitable instrument, to carry into effect the powers granted to the government. If it be so, then the second, and the only other question is, whether the powers given in a particular charter are *appropriate* for a Bank. If they are powers which are *appropriate* for a Bank, powers which Congress may fairly consider to be useful, to the Bank or the country, then Congress may confer these powers; because the discretion to be exercised in framing the constitution of the Bank belongs to Congress. One man may think the granted powers not indispensable to the particular Bank; another may suppose them injudicious, or injurious; a third may imagine that other powers, if granted in their stead, would be more beneficial; but all these are matters of expediency, about which men may differ; and the power of deciding upon them belongs to Congress. I again repeat, sir, that if for reasons of this kind the President sees fit to negative a bill, on the ground of its being *inexpedient*, or *impolitic*, he has a right to do so; but remember, sir, that we are now on the constitutional question. Remember, that the argument of the President, is, that because powers were given to the Bank by the charter of 1816, which *he* thinks not necessary, *that charter is unconstitutional.* Now, sir, it will hardly be denied, or rather it was not denied or doubted before this message came to us, that if there was to be a Bank, the powers and duties of that Bank must be prescribed in the Law creating it. Nobody, but Congress, it has been thought could grant these powers, and privileges, or prescribe their limitations. It is true, indeed that the message pretty plainly intimates that the President should have been *first* consulted, and that he should have had the framing of the Bill; but we are not yet accustomed to that order of things, in enacting laws, nor do I know a parallel to this claim, thus now brought forward, except, that in some peculiar cases in England highly affecting the royal prerogatives, the assent of the monarch is necessary, before either the house of peers, or his majesty's faithful commons are permitted to act upon the subject, or to entertain its consideration. But supposing, sir, that our accustomed forms and our republican principles, are still to be followed, and that a law creating a bank is, like all other laws, to originate with Congress, and that the President has nothing to do with it, till it is presented for his approval, then it is clear that the powers and duties of a proposed Bank, and all

the terms and conditions annexed to it, must, in the first place, be settled by congress. This power, if constitutional at all, is only constitutional in the hands of congress. Any where else its exercise would be plain usurpation. If then the authority to decide what powers ought to be granted to a Bank, belong to Congress, and Congress shall have exercised that power, it would seem little better than absurd to say, that its act, nevertheless, would be unconstitutional and invalid, if in the opinion of a third party, it had misjudged, on a question of expediency, in the arrangement of details. According to such a mode of reasoning, a mistake in the exercise of jurisdiction, takes away the jurisdiction. If Congress decide right, its decision may stand; if it decide wrong, its decision is nugatory; and whether its decision be right or wrong, another is to judge, *although the original power of making the decision must be allowed to be exclusively in Congress.* This is the end to which the argument of the message will conduct its followers. Sir, in considering the authority of Congress to invest the Bank with the particular powers granted to it, the inquiry is not, and cannot be *how* appropriate these powers are, but whether they be *at all appropriate*; whether they come within the range of a just and honest discretion; *whether Congress may fairly esteem them to be necessary.* The question is not, are they the fittest means, the best means, or whether the Bank might not be established without them. But the question is, are they such as Congress, *bona fide*, may have regarded as *appropriate* to the end. If any other rule were to be adopted, nothing could ever be settled.—A law would be constitutional to day and unconstitutional to morrow. Its constitutionality would altogether *depend* upon individual opinion, on a matter of mere expediency. Indeed such a case as that is now actually before us. Mr. Madison deemed the powers given to the Bank in its present charter proper and necessary. He held the Bank, therefore, to be constistitutional. But the present President, not acknowledging that the power of deciding on these points rests with Congress, nor with Congress and the then President, but setting up his own opinions, as the standard, declares the law, now in being, unconstitutional, because the powers granted by it, are, in his estimation not necessary and proper. I pray to be informed, sir, whether, upon similar grounds of reasoning, the President's *own* scheme for a Bank, if Congress, should do so unlikely a thing as to adopt it, would not become unconstitutional also, if it should so happen that his successor should hold *his* Bank in as light esteem as he holds those established under the auspices of Washington and Madison?

If the reasoning of the message be well founded, it is clear that the charter of the existing Bank is not a law. The Bank has no legal existence; it is not responsible to Government; it has no authority to act; it is incapable of being an agent; the President

may treat it as a nullity, to-morrow; withdraw from it all the public deposites, and set afloat all the existing national arrangements of revenue and finance. It is enough to state these monstrous consequences, to shew that the doctrine, principles, and pretensions, of the message are entirely inconsistent with a Government of laws. If that which Congress has enacted, and the Supreme Court has sanctioned, be not the law of the land, then the reign of law has ceased, and the reign of individual opinion has already begun.

The President, in his commentary on the details of the existing Bank Charter, undertakes to prove that one provision, and another provision, is not necessary and proper; because, as he thinks, the same objects, proposed to be accomplished by them, might have been better attained in another mode; and therefore such provisions are not *necessary*, and so not warranted by the Constitution. Does not this show, that according to his own mode of reasoning, his *own* scheme would not be Constitutional, since another scheme, which probably most people would think a better one, might be substituted for it? Perhaps, in any bank charter, there may be no provisions which may be justly regarded as *absolutely indispensable;* since it is probable, that for any of them, some others might be substituted. No Bank, therefore, ever could be established; because there never has been, and never could be, any charter, of which every provision should appear to be indispensable, or necessary and proper, in the judgment of every individual. To admit, therefore, that there may be a Constitutional Bank, and yet to contend for such a mode of judging of its provisions and details, as the message adopts involves an absurdity. Any charter, which may be framed may be taken up, and each power conferred by it, successively denied, on the ground, that, in regard to each, either no such power is "necessary or proper" in a Bank, or which is the same thing in effect, some other power might be substituted for it, and supply its place. That can never be *necessary* in the sense in which the message understands that term, which *may be dispensed with;* and it cannot be said that any power *may not be dispensed with*, if there be some others, which might be substituted for it, and which would accomplish the same end. Therefore, no Bank could ever be Constitutional; because none could be established, which should not contain some provisions, which might have been omitted, and their place supplied by others. Mr. President, I have understood the true and well established doctrine to be, that, after it has been decided, that it is competent for Congress to establish a Bank, then it follows, that it may create such a Bank as it judges, in its discretion, to be best, and invest it with all such power as it may deem fit and suitable; with this limitation, always, that all is to be done in the *bona fide* execution of the power to create *a Bank*. If the granted powers are appropriate to the professed end, so that the granting of them cannot

be regarded as usurpation of authority by Congress, or an evasion of Constitutional restrictions under *colour* of establishing a Bank, then the charter is Constitutional, whether these powers be thought indispensible by others or not, or whether even Congress itself deemed them absolutely indispensible or only thought them fit and suitable; or, whether they are *more or less appropriate* to their end. It is enough that they are appropriate; it is enough that they are suited to produce the effects designed; and no comparison is to be instituted, in order to try their constitutionality, between them and others which may be suggested. A case, analagous to the present, is found in the Constitutional power of Congress, over the mail. The Constitution says no more than that "Congress shall have power to establish post offices and post roads;" and, in the general clause "all powers necessary and proper" to give effect to this. In the execution of this power, Congress has protected the mail, by providing that robbery of it shall be punished with death. Is this infliction of capital punishment constitutional? Certainly it is not, unless it be both "proper and necessary." The President may not think it necessary or proper; the law, then, according to the system of reasoning enforced in the message, is of no binding force, and the President may disobey it, and refuse to see it executed. The truth is, Mr. President, that if the general object, the subject matter, properly belong to Congress, all its incidents belong to Congress, also. If Congress is to establish post offices and post roads, it may, for that end, adopt one set of regulations or another; and either would be Constitutional. So the details of one Bank are as Constitutional as those of another, if they are confined, fairly and honestly, to the purpose of organizing the institution, and rendering it useful. One *Bank* is as Constitutional as another *Bank*. If Congress possess the power to make a Bank, it possesses the power to make it efficient, and competent to produce the good derived by it. It may clothe it with all such power and privileges, not otherwise inconsistent with the Constitution, as may be necesssry in its own judgment, to make it what Government deems it should be. It may confer on it such immunities, as may induce individuals to become stockholders, and to furnish the capital; and since the extent of these immunities and privileges, is matter of discretion, and matter of opinion, Congress only can decide it, because Congress alone can frame, or grant the charter. A charter, thus granted to individuals, becomes a contract with them, upon their compliance with its terms. The Bank becomes an agent, bound to perform certain duties, and entitled to certain stipulated rights and privileges, in compensation for the proper discharge of these duties; and all their stipulations, so long as they are appropriate to the object professed, and not repugnant to any other Constitutional injunction, are entirely within the competency of Congress. And yet, sir, the message of the President toils through all the common place topics of mono-

poly, the right of taxation, the suffering of the *poor*, and the arrogance of the rich, with as much painful effort, as if one, or another, or all of them, had something to do with the Constitutional question. What is called the "monopoly," is, made the subject of repeated rehearsal, in terms of special complaint. By this "monopoly," I suppose is understood, the restriction contained in the charter, that Congress shall not during the twenty years, create another Bank. Now, sir, let me ask who would think of creating a Bank, inviting stockholders into it, with large investments, imposing upon it heavy duties, as connected with the Government, receiving some millions of dollars as a *bonus*, or premium, and yet retaining the power of granting, the next day, another charter, which would destroy the whole value of the first?—If this be an unconstitutional restraint on Congress, the Constitution must be strangely at variance with the dictates both of good sense and sound morals. Did not the first Bank of the United States contain a similar restriction? And have not the states granted bank charters, with a condition, that if the charter should be accepted, they would not grant others? States have certainly done so; and, in some instances, where no *bonus* or premium was paid at all; but from the mere desire to give effect to the charter, by inducing individuals to accept it and organize the institution. The President declares that this restriction is not *necessary* to the efficiency of the Bank; but that is the very thing which Congress and his predecessor in office were called on to decide, and which they did decide, when the one passed and the other approved the act. And he has now no more authority to pronounce his judgment on that act than any other individual in society. It is not his province to decide on the constitutionality of statutes which Congress has passed, and his predecessors approved.

There is another sentiment, in this part of the message, which we should hardly have expected to find in a paper which is supposed, whoever may have drawn it up, to have passed under the review of professional characters. The message declares that this limitation to create no other Bank is unconstitutional, because, although Congress may use the discretion vested in them, "they may not limit the discretion of their successors." This reason is almost too superficial to require an answer. Every one at all accustomed to the consideration of such subjects, knows that every Congress can bind its successors to the same extent that it can bind itself: the power of Congress is always the same; the authority of law always the same. It is true, we speak of the twentieth Congress, and the twenty-first Congress, but this is only to denote the period of time, or to mark the successive organizations of the House of Representatives under the successive periodical elections of its members. As a politic body, as the legislative power of the government, Congress is always conti-

nuous, always identical. A particular Congress, as we speak of it, for instance the present Congress, can no farther restrain itself from doing what it may chance to do at the next session, than it can restrain any succeeding Congress from doing what it may choose. Any Congress may repeal the act or law of its predecessor, if in its nature it be repealable, just as it may repeal its own act; and if a law, or an act, be irrepealable in its nature, it can no more be repealed by a subsequent Congress than by that which passed it. All this is familiar to every body. And Congress, like every other legislature, often passes acts which, being in the nature of grants, or contracts, are irrepealable ever afterwards. The message, in a strain of argument, which it is difficult to treat with ordinary respect, declares that this restriction on the power of Congress, as to the establishment of other Banks, is a palpable attempt to amend the constitution by an act of legislation. The reason on which this observation purports to be founded, is, that Congress, by the constitution, is to have exclusive legislation over the District of Columbia; and when the bank charter declares that Congress will create no new Bank within the district, it annuls this power of exclusive legislation! I must say that this reasoning hardly rises high enough to entitle it to a passing notice. It would be doing too much credit to call it plausible. No one needs to be informed that exclusive power of legislation is not unlimited power of legislation; and if it were, how can that legislative power be unlimited that cannot restrain itself; that cannot bind itself, by contract? Whether as a government, or as an individual, that being is fettered and restrained which is not capable of binding itself by ordinary obligation. Every legislature binds itself whenever it makes a grant, enters into a contract, bestows an office, or does any other act or thing which is in its nature irrepealable. And this, instead of detracting from its legislative power, is one of the modes of exercising that power. And the legislative power of Congress over the District of Columbia, would not be full and complete if it might not make just such a stipulation as the bank charter contains.

As to the taxing power of the states, about which the message says so much, the proper avenues to all it says, is, that *the states possessed the power to tax any instrument of the Government of the United States.* It was no part of their power before the constitution, and they derive no such power from any of its provisions. It is no where given to them. Could a State tax the *coin* of the United States, at the mint? Could a State lay a stamp tax, on the process of the courts of the United States, and on custom house papers? Could it tax the transportation of the mail, or the ships of war, or the ordnance, or the ministers of war, of the United States? The reason that they cannot be taxed, by a state, is, that they are means and instruments of the Govern-

ment of the United States. The establishment of a Bank, exempt from state taxation, takes away no existing right in a state. It leaves it all it ever possessed; but the complaint is, that the Bank charter does not *confer* the power of taxation. This, certainly, though not new (for the same argument was urged here,) appears to me to be a strange mode of asserting and maintaining state rights. The power of taxation is a sovereign power; and the President and those who think with him, are of opinion, in a given case, that this sovereign right should be conferred on the States, *by an act of Congress*. There is, if I mistake not, sir, as little compliment to State sovereignty, in this idea, as there is of sound Constitutional doctrine. Sovereign rights, held under the grant of an act of Congress, present a proposition, quite new in Constitutional law.

The President, himself, even admits, that an instrument of the Government of the United States ought not, as such, to be taxed by the States; yet he contends for such a power of taxing property connected with this instrument, and essential to its very being, as places its whole existence in the pleasure of the States. It is not enough that the States may tax all the property of all their own citizens, wherever invested, or however employed. The complaint is, that the power of State taxation does reach so far as to take cognizance over persons *out of the State*, and to tax *them*, for a franchise, lawfully exercised under the authority of the United States. Sir, when did the power of the States, or indeed of any Government, go to such an extent as that?—Clearly never. The taxing power of all communities is necessarily and justly limited, to the property of its own citizens, and to the property of others, having a distinct local existence, as property within its jurisdiction; it does not extend to rights, and franchises, rightly exercised, under the authority of other Governments, nor to persons beyond its jurisdiction. As the *Constitution* has left the taxing power of the States, as the *Bank Charter* leaves it, Congress has not undertaken either to take away, or to confer, a taxing power; nor to enlarge, or to restrain it; if it were to do either, I hardly know which of all would be the least excusable.

I beg leave to repeat, Mr. President, that what I have now been considering, are the President's objections, not to the policy or expediency, but to the constitutionality of the Bank; and not to the constitutionality of any *new*, or proposed Bank, but of the Bank, as it now is, and as it has long existed. If the President had declined to approve this bill, because he thought the original charter unwisely granted, and the Bank, in point of policy and expediency, objectionable or mischievous, and in that view only had suggested the reasons, now urged by him, his argument, however inconclusive, would have been intelligible, and not, in its whole frame and scope, inconsistent with all well established first principles. His rejection of the Bill, in that case, would have been, no doubt, an extraordinary exer-

cise of power; but it would have been, nevertheless, the exercise of a power, belonging to his office, and trusted by the Constitution to his discretion. But when he puts forth an array of arguments, such as the message employs, not against the expediency of the Bank, but against its constitutional existence, he confounds all distinctions, mixes questions of policy, and questions of right together, and turns all constitutional restraints into mere matters of opinion. As far as its power extends, either in its direct effects, or as a precedent, the message not only unsettles every thing which has been settled, under the constitution, but would shew, also, that the constitution itself is utterly incapable of any fixed construction, or definite interpretation; and that there is no possibility of establishing, by its authority, any practical limitations on the powers of the respective branches of the government.

When the message denies, as it does, the authority of the Supreme Court to decide on constitutional questions, it effects, so far as the opinion of the President and his authority can effect, a complete change in our government. It does two things: first, it converts constitutional limitations of power into mere matters of opinion, and then it strikes the Judicial Department, as an efficient department, out of our system. But the message by no means stops, even at this point. Having denied to Congress the authority of judging what powers may be constitutionally conferred on a bank, and having erected the judgment of the President himself into a standard, by which to try the constitutional character of such powers, and having denounced the authority of the Supreme Court, and decided finally on constitutional questions, the message proceeds to claim for the President, not the power of approval, but the primary power, the power of *originating* laws. The President informs Congress, that *he* would have sent them such a charter, if it had been properly asked for, as they ought to possess. He very plainly intimates, that in his opinion, the establishment of all laws, of this nature at least, belongs to the functions of the executive government; and that Congress ought to have waited for the manifestation of the executive will, before it presumed to touch the subject. Such, Mr. President, stripped of their disguises, are the real pretences, set up in behalf of the executive power, in this most extraordinary paper.

Mr. President, we have arrived at a new epoch. We are entering on experiments, with the Government and the Constitution of the country, hitherto untried, and of fearful and appalling aspect. This message calls us to the contemplation of a future, which little resembles the past. Its principles are at war with all that public opinion has sustained, and all which the experience of the Government has sanctioned. It denies first principles; it contradicts truths, heretofore received as indisputable. It denies to the Judiciary the interpretation of law, and

demands to divide, with Congress, the origination of statutes. It extends the grasp of Executive pretension over every power of the government. But this is not all. It presents the Chief Magistrate of the Union in the attitude of *arguing away* the powers of that government, over which he has been chosen to preside; and adopting, for this purpose, modes of reasoning, which, even under the influence of all proper feeling towards high official station, it is difficult to regard as respectable. It appeals to every prejudice which may betray men into a mistaken view of their own interests; and to every passion, which may lead them to disobey the impulses of their understanding. It urges all the specious topics of state rights, and national encroachment, against that which a great majority of the states have affirmed to be rightful, and in which all of them have acquiesced. It sows, in an unsparing manner, the seeds of jealousy and ill will, against that government, of which its author is the the official head. It raises a cry, that *Liberty is in danger*, at the very moment when it puts forth claims to powers, heretofore unknown and unheard of. It affects alarm for the *public freedom*, when nothing so much endangers that freedom as its own unparalleled pretences. This, even, is not all. It manifestly seeks to influence the poor against the rich; it wantonly attacks whole classes of the people, for the purpose of turning against them the prejudices and the resentments of other classes. It is a state paper, which finds no topic too exciting for its use; no passion too inflammable for its address and its solicitation. Such is this message. It remains, now, for the people of the United States to choose, between the principles here avowed, and their Government. These cannot subsist together. The one or the other must be rejected. If the sentiments of the message shall receive general approbation, the Constitution will have perished, even earlier than the moment which its enemies originally allowed for the termination of its existence. It will not have survived to its fiftieth year.